

SARASWATEE ARUMUGAM & ANOR.

v.

TAN CHONG & SONS MOTOR SDN. BHD.

HIGH COURT MALAYA, KUALA LUMPUR

WAN HAMZAH J

[CIVIL APPEAL NO. 36 OF 1982]

31 DECEMBER 1984

CIVIL PROCEDURE: *Pleadings of both respondent and appellants did not clearly and completely set out issues - Magistrate proceeded to try case - On appeal - Counsel submitted an agreed list of issues to replace pleadings - Court requested to determine issues.*

In the Magistrate's Court the respondent brought an action against the appellants claiming damages for alleged breach of a hire-purchase agreement. The statement of claim did not contain particulars of the hire-purchase agreement or of the alleged breach. The record does not show that the appellants asked for particulars but they proceeded to file a Statement of Defence and counterclaim in which they alleged that there was no contract by which they were bound to buy a car from the respondent. But in spite of that they contended that the respondent wrongly repudiated "the whole terms of the agreement" as if there had been a contract between the parties had it not pleaded in the alternative. The appellants also counterclaimed for a certain sum of money as a refund of deposit which they alleged they had placed with the respondent. The respondent denied the counterclaim.

The Magistrate proceeded to try the case even though the issues were not clearly and completely set out in the pleadings. The Magistrate gave judgment for the respondent but made no order on the appellants' counterclaim.

On appeal both Counsel agreed that the pleadings were not drawn properly and submitted an agreed list of issues to replace pleadings none of which were raised in pleading and requested the Court to determine the issues.

Held:

[1] It was not possible to make a fair and just determination of these issues and finally to give a correct judgment without proper evidence before the Court since these issues were not placed before the Magistrate at the trial.

[2] In view of the many irregularities in the case and in order that justice be done there should be a fresh trial of the case before another Magistrate.

[Judgment of Magistrate set aside. Respective solicitors to bear costs of previous trial, this appeal and cost of amendments.]

For the appellants - S. Sothi; M/s. Syarikat S. Sothi

For the respondent - Evelyn Wan; M/s. Choo, Chew, Wan & Co.

JUDGMENT

Wan Hamzah J:

In the Kuala Lumpur Magistrate's Court Civil Action No. 10046/1979 the plaintiff claimed damages for alleged breach by the defendants of a hire-purchase agreement. No particulars of the hire-purchase agreement or of the alleged breach were stated in the Statement of Claim and the record does not show that the defendants asked for particulars. But they proceeded

- a* to file Statement of Defence and Counterclaim, in which they made certain allegations from which it appears that they tried to plead that there was no contract whereby they were bound to buy a car from the plaintiff. But in spite of that they contended that the plaintiff wrongly repudiated “the whole terms of the agreement” as if there had been a contract between the parties, and the defendants stated this contention without stating that it was pleaded as an alternative to the other contention. They counterclaimed for a certain sum of money for refund
- b* of deposit which they alleged they had placed with the plaintiff. The plaintiff filed reply and Defence to Counterclaim to deny allegations made by the defendants and to contest the counterclaim. The Magistrate proceeded to try the case although the issues had not been set clearly and completely. The Magistrate gave judgment for the plaintiff but did not make any order on the defendant’s counterclaim.
- c* When this appeal came up for hearing in this Court Counsel for the plaintiff and Counsel for defendants informed the Court that they agreed that the pleadings had not been properly drawn and they submitted an agreed list of issues to replace the pleadings. The list contains seven issues and also certain statements agreed upon by both Counsel. The list with the statements is attached to this judgment. None of these issues had been raised in the pleadings. They asked this Court to determine these issues.
- d* In my opinion it is not possible to make a fair and just determination of these issues and finally to give a correct judgment in the case without proper evidence before the Court. At the time of the trial these issues had not been placed before the Magistrate and it cannot be said that the minds of the parties and of the Magistrate were directed to these issues at the time when evidence was tendered and admitted. There can be proper evidence only if the issues were clear in their minds and evidence was adduced and admitted accordingly. I believe
- e* that in view of the many irregularities in this case and in order that justice be done, there should be fresh trial of the case before another Magistrate, but before fresh trial is held the real issues must first be set out clearly. Therefore I order that the judgment of the Magistrate given on 23 October 1981 be set aside and that the plaintiff should amend its Statement of Claim. After the plaintiff has filed and served its amended Statement of Claim the defendants should amend their Statement of Defence and counterclaim. Whether or not the plaintiff
- f* should amend his Reply and Defence to Counterclaim or should withdraw it, will of course depend on how the Statement of Defence and Counterclaim will be amended. Then the case should be fixed for fresh trial. I further order that the respective solicitors themselves should bear the costs of the previous trial and of this appeal and the cost of the amendments, considering that the confusion had been caused by them.

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Also found at [1985] 1 CLJ 383

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